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11 LONTEX CORPORATION d/b/a  
12 SWEAT IT OUT®

13 UNITED STATES DISTRICT COURT  
14  
15 CENTRAL DISTRICT OF CALIFORNIA

16 LONTEX CORPORATION d/b/a  
17 SWEAT IT OUT®,

18 Plaintiff,

19 v.

20 FASHION NOVA, LLC,

21 Defendant.

Case No. 2:23-cv-9419

**COMPLAINT FOR FEDERAL  
REGISTERED TRADEMARK  
INFRINGEMENT AND UNFAIR  
COMPETITION UNDER 15 U.S.C.  
§§ 1114, 1125**

JURY TRIAL DEMANDED

COMES NOW the Plaintiff, Lontex Corporation d/b/a SWEAT IT OUT® (“SWEAT IT OUT”), by counsel, and as for its Complaint against the Defendant FASHION NOVA, LLC (“FASHION NOVA”), SWEAT IT OUT alleges as follows:

**PRELIMINARY STATEMENT**

1. For decades, SWEAT IT OUT has manufactured and sold athletic apparel, including to the general public, professional sports franchises, and collegiate athletic programs. As such, it gained substantial notoriety and name recognition.

2. Since at least 1990, its brand of clothing includes a large range of clothing branded SWEAT IT OUT, t-shirts, sports bras, sports girdles, undergarments, sweat pants, sweat shirts, jackets, compression tights, shorts, and shirts.

3. The SWEAT IT OUT brand in both word mark and logo form is a federal-registered, incontestable mark for these and other goods, including for the U.S. Reg. Nos. 1,653,120 (registered since 1991), 2,015,835 (Registered since 1996), 2,015,835 (Registered since 1996), 2,255,998 (registered since 1999), 2,269,445 (Registered since 1999), 2,766,572 (Registered since 2003), 3,579,266 (Registered since 2009). Collectively, its registered SWEAT IT OUT registrations are attached in representative form as Exhibit A and the mark is referred to herein as the “SWEAT IT OUT mark”.

4. Despite SWEAT IT OUT’s success and well-known SWEAT IT OUT athletic apparel and the immense goodwill SWEAT IT OUT has generated in the mark, SWEAT IT OUT approached FASHION NOVA about its selling of apparel under the SWEAT IT OUT trademark in early 2023. During those discussions, rather than stopping infringement, FASHION NOVA launched yet additional SWEAT IT OUT apparel the same month as discussions.

5. After taking that new product down and claiming their entire organization had been instructed to not use any product name using SWEAT IT OUT, in November 2023 when SWEAT IT OUT went to confirm whether the infringement had indeed stopped or not, it discovered FASHION NOVA had released at least three more infringing products with SWEAT IT OUT product names.

## PARTIES

8. Defendant FASHION NOVA is a California limited liability company with its principal place of business on information and belief in Vernon, California.

9. This action arises under Federal law, the provisions of the Trademark laws of the United States (the Lanham Act), as amended, 15 U.S.C. §§ 1114, 1125(a), and under, *inter alia*, the statutes and common laws of the State of California.

1 as to be part of the same case or controversy under Article III of the United States  
2 Constitution.

3 11. Venue is proper in this judicial district under 28 U.S.C § 1391 because  
4 a substantial portion of the events or omissions giving rise to the claims occurred in  
5 this district, and FASHION NOVA resides in this district by virtue of being subject  
6 to personal jurisdiction in this judicial district by, among others, its repeated  
7 availment and direction of its activities toward this district, its operating of the  
8 FASHION NOVA online store (fashionnova.com) and five physical stores in this  
9 district, and the actions alleged herein.

### 10 **GENERAL ALLEGATIONS**

11 12. SWEAT IT OUT has been providing professional teams and collegiate  
12 teams with athletic apparel products since 1989. SWEAT IT OUT has for decades  
13 been well-regarded, including amongst the NFL teams, collegiate sports teams  
14 (including a large percentage of the Division One schools) and with doctors of  
15 sports medicine. This includes the best athletes and professional sports teams from  
16 across the country, including at least 25 teams from the NFL, 15 teams from the  
17 MLB, as well as various NHL, AHL, and NBA professional sports teams.

18 13. SWEAT IT OUT also sells its SWEAT IT OUT apparel to persons of  
19 all ages and body types, whether they are office professionals, construction  
20 workers, gym enthusiasts, runners, child athletes, elderly persons, or anybody in  
21 between.

22 14. SWEAT IT OUT has continuously and consistently used the SWEAT  
23 IT OUT mark since starting its use, developing substantial goodwill across the  
24 entire United States.

25 15. The federal registrations for the SWEAT IT OUT Mark are all  
26 incontestable. SWEAT IT OUT products have achieved large distribution and sales  
27 in each state in the United States, including California, with an estimated over  
28 25,000 customers since 2008 alone. The mark is inherently distinctive in both its

1 word and composite form and has acquired distinctiveness from significant usage.  
2 The mark is also visible periodically on national televised sports by professional  
3 athletes who where the product and have the “SWEAT IT OUT” logo prominently  
4 shown.

5 16. The SWEAT IT OUT Mark is inherently distinctive and generates  
6 consistent commercial success, establishing strong secondary meaning throughout  
7 the United States. The SWEAT IT OUT branded merchandise is sold throughout  
8 the United States, in daily and weekly social media accounts and posts  
9 ([twitter.com/sweatitout](https://twitter.com/sweatitout); [facebook.com/SweatItOutCoolCompression](https://facebook.com/SweatItOutCoolCompression)),  
10 [SweatItOut.com](https://SweatItOut.com) (the online store and home page for SWEAT IT OUT), online  
11 marketing campaigns, and in-person presentations to upwards of 10,000 individuals  
12 per year, which distribution and marketing spans every state in the United States  
13 sports teams (including athletic trainers, both head and all assistant athletic  
14 trainers). Sweat It Out has at all times used professional online marketing firms  
15 specializing in SEO to further maximize its online presence and prominent search  
16 results, given the importance of the online marketplace to its sales and marketing  
17 channels.

18 17. Examples of Plaintiff’s product imagery are below:  
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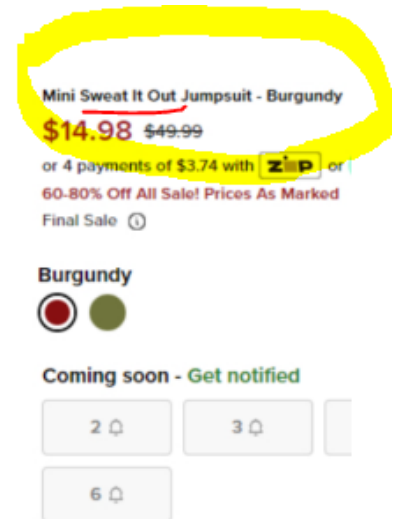




## FASHION NOVA's Repeat Wrongful Conduct Involving the SWEAT IT OUT Mark

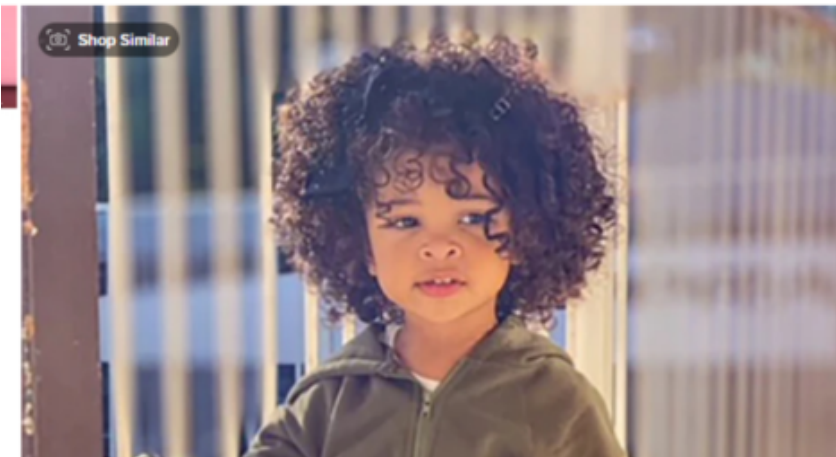
18. Sometime prior to April 17, 2023, Defendant Fashion Nova adopted the infringing SWEAT IT OUT mark for use as the product mark of its women's and children's clothing. The product mark is critical as it is the first wording listed with the image of the product, and there is no tagging readily visible on the online product offering.

19. This initial discovered infringement is referred to as Round One Infringement, and includes at least the below products sold on at least FashionNova.com, and advertised on a host of social media and third party sites product name, depicted below with true and correct copies of the online product pages are attached hereto as **Exhibit B**:





Mini Sweat It Out Jumpsuit - Olive



Mini Sweat It Out Jumpsuit - Olive

**\$12.48** ~~\$49.99~~or 4 payments of \$3.12 with **Z!P** or  
60-80% Off All Sale! Prices As Marked  
Final Sale ⓘ

Olive



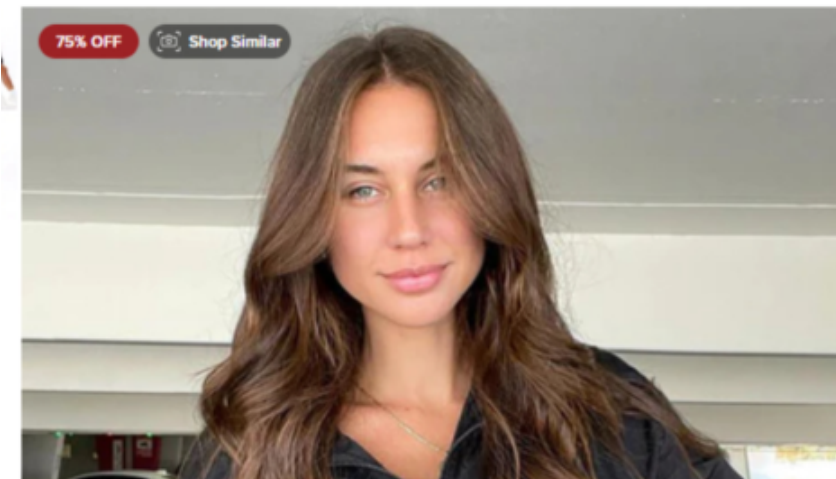
Coming soon - Get notified

2 ⓘ

3 ⓘ

6 ⓘ

Lougewear Sets &gt; Sweat It Out Short Set - Black



75% OFF

Shop Similar

Sweat It Out Short Set - Black

**\$13.98** ~~\$54.99~~or 4 payments of \$3.49 with **Z!P** or  
60-80% Off All Sale! Prices As Marked  
Final Sale ⓘ

Black



Coming soon - Get notified

XS ⓘ

S ⓘ

XL ⓘ

Lougewear Sets &gt; Sweat It Out Short Set - Teal



75% OFF

Shop Similar

Sweat It Out Short Set - Teal

**\$13.98** ~~\$54.99~~or 4 payments of \$3.49 with ⓘ  
60-80% Off All Sale! Prices As Marked  
Final Sale ⓘ

Teal



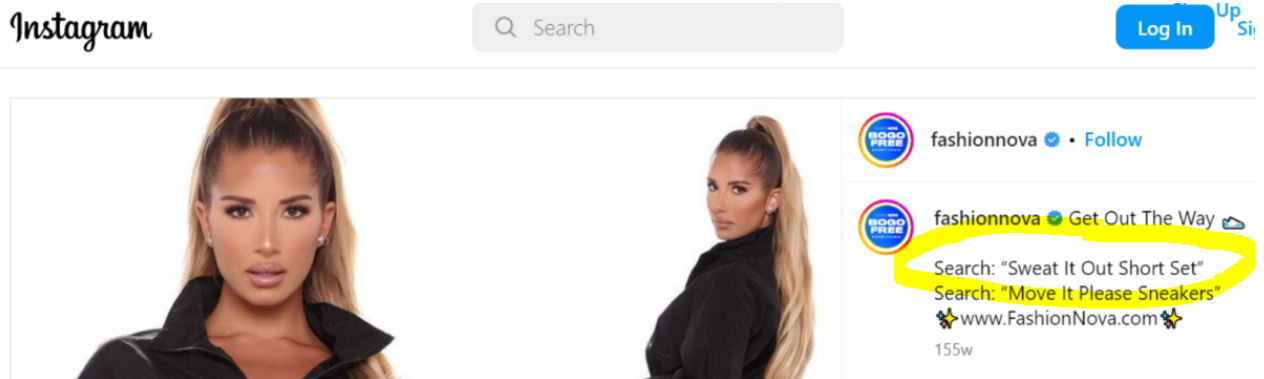
Coming soon - Get notified

XS ⓘ

S ⓘ

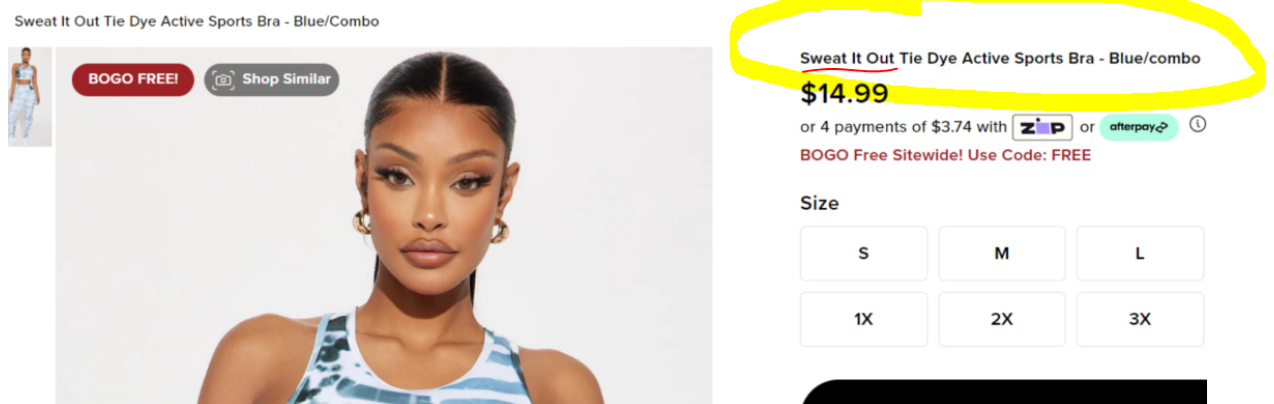
XL ⓘ

20. Representative social media is shown below, which remained online through at least May 24, 2023 (the date of this screen capture):



21. SWEAT IT OUT provided detailed written notice to FASHION NOVA of the infringement, including screenshots of each of the located infringing products and product names on April 17, 2023.

22. Even as FASHION NOVA replied representing it had taken down these items, the Round Two Infringement launched and yet additional products with the infringing SWEAT IT OUT product names were launched, including those depicted below of which true and correct copies of the online product pages are attached as **Exhibit C** hereto and referred to herein as Second Round Infringement:



23. Other products also cross-reference to these infringing product names in order to cross sell products, including for example:

Stay Prepared Active Legging - Pink/Combo



BOGO FREE!

Shop Similar

Stay Prepared Active Legging - Pink/Combo

\$14.99

or 4 payments of \$3.74 with or

BOGO Free Sitewide! Use Code: FREE

Size

|    |    |    |
|----|----|----|
| S  | M  | L  |
| 1X | 2X | 3X |

Add to bag

COMPLETE THE SET



Stay Prepared Active S  
Pink/Combo

Pink/Combo

Size

Select A Size

Get it by Tomorrow with 1-Day Shipping  
Order within 3 hrs 0 mins

Free Shipping \*   
Estimated Delivery: Thursday, June 1 to 2

Product Details

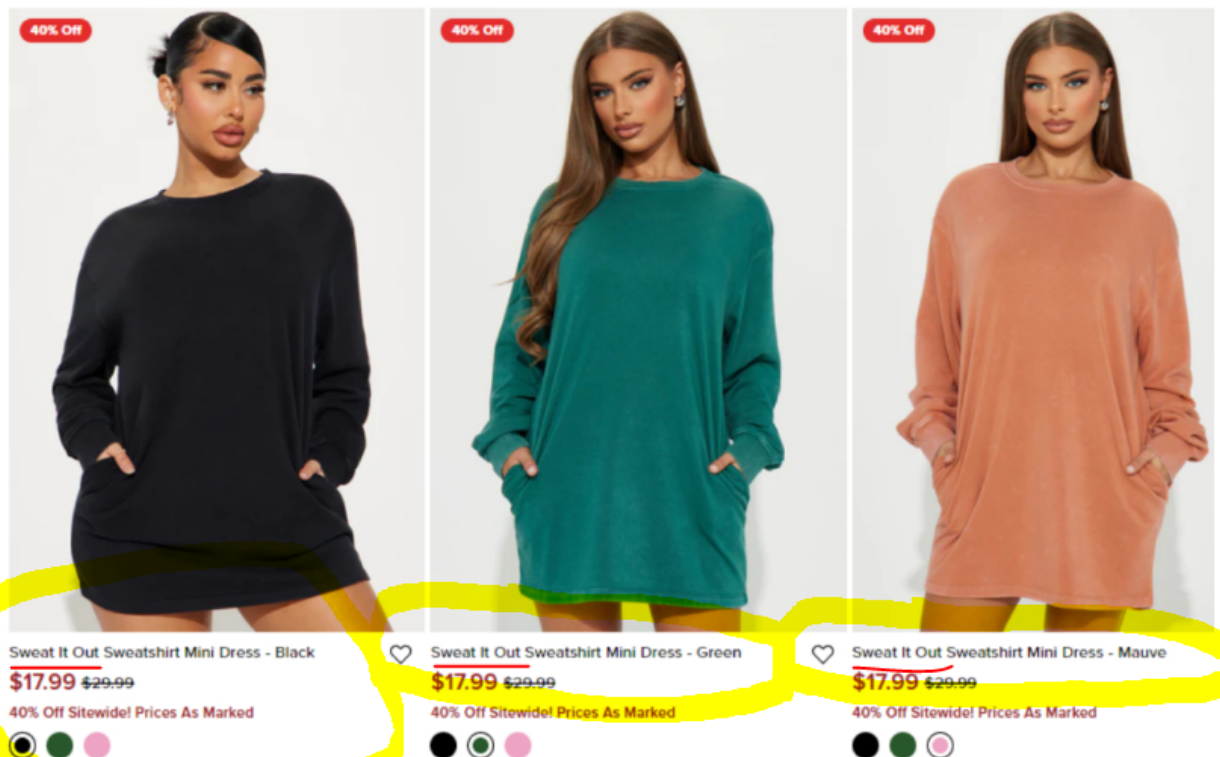
- Available In Blue/Combo.
- Active Legging
- Tie Dye
- High Waisted
- Elastic Waistband
- Stretch
- Pair With Sweat It Out Active Sports Bra\*

24. SWEAT IT OUT again gave written notice and a copy of screenshots of these Second Round Infringement infringing products to FASHION NOVA's intellectual property counsel on May 24, 2023.

25. SWEAT IT OUT reserved all rights but demanded assurances as to steps FASHION NOVA was taking not to infringe its mark going forward. The written response from FASHION NOVA's counsel on June 13, 2023 was:

"Fashion Nova has authorized us to transmit the following response to your question: Fashion Nova's buying team has been instructed not to use the phrase "Sweat it Out" in any form going forward, including as a style or product name."

26. Nevertheless, SWEAT IT OUT has recently learned that still *more* infringing product and product names were released since that assurance, proving it to be either false or short-lived. This third set of infringing products, referred to herein as Third Round Infringement, is shown below and has been attached as Exhibit D hereto. The below depiction shows how the products for all rounds of infringement appear in the search and store modes before one clicks on the product and is directed to the specific product page, showing that in this mode virtually the only text associated with the product is the infringing product mark – this is how all infringing products were marketed on FashionNova.com.



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Sweat It Out Sweatshirt Mini Dress - Black



**\$17.99** ~~\$29.99~~

40% Off Sitewide! Prices As Marked





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Sweat It Out Sweatshirt Mini Dress - Green



**\$17.99** ~~\$29.99~~

40% Off Sitewide! Prices As Marked



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Sweat It Out Sweatshirt Mini Dress - Mauve

**\$17.99** ~~\$29.99~~

40% Off Sitewide! Prices As Marked



1           27. To the extent the house mark FASHION NOVA appears in the domain  
2 or marketing materials or elsewhere with these products, it has only been to  
3 heighten confusion and falsely associate itself with Plaintiff's brand and conveys to  
4 consumers and the relevant public that it has acquired the rights to sell the SWEAT  
5 IT OUT product line itself. Because FASHION NOVA is fast fashion, consumers  
6 are expressly encouraged to associate the products with other popular marketplace  
7 products such as Plaintiff's longstanding and incontestable SWEAT IT OUT  
8 apparel products.

9           28. The infringing products and product names from the First, Second and  
10 Third Round Infringements of FASHION NOVA resulted in heavy marketing and  
11 resulting sales benefits for FASHION NOVA, including the actual infringing  
12 products themselves and cross-sale products.

13           29. FASHION NOVA is a massive company with over a billion dollars in  
14 annual sales, and its infringing sales for the First, Second and Third Round  
15 Infringements, and any additional uses of "SWEAT IT OUT" or similarly  
16 confusing wording identified in discovery are substantial.

17           30. FASHION NOVA has captured sales of customers believing  
18 themselves to be purchasing SWEAT IT OUT affiliated apparel and misdirected  
19 traffic on the internet as a result of the use of infringing marks to drive internet  
20 sales.

21           31. At all relevant times, FASHION NOVA knew that the SWEAT IT  
22 OUT Mark belonged to SWEAT IT OUT, and was aware of the SWEAT IT OUT  
23 Mark registrations specifically protecting the mark with respect to the sale of  
24 apparel.

25           32. Yet FASHION NOVA has used the SWEAT IT OUT Mark without  
26 authorization or approval in connection with the sale of its infringing SWEAT IT  
27 OUT products, and the accused goods are in the same class and overlap with the  
28 types of apparel identified in SWEAT IT OUT's registrations.

33. By its illegitimate and unauthorized use of SWEAT IT OUT, FASHION NOVA acted despite knowing of the likelihood of confusion with SWEAT IT OUT's valid, incontestable trademark registrations. At the least, FASHION NOVA was reckless and careless in its evaluation of the likelihood of confusion resulting from its infringing use of "SWEAT IT OUT" lines of products and did not attempt to contact SWEAT IT OUT whatsoever for authorization before using the SWEAT IT OUT Mark.

**FIRST COUNT**  
**TRADEMARK INFRINGEMENT**  
**UNDER THE LANHAM ACT IN VIOLATION OF 15 U.S.C. § 1114**

37. FASHION NOVA has used, authorized and/or directed the use of the SWEAT IT OUT Mark in connection with the promotion, sale, offering for sale, distribution or advertising of goods and/or services.

39. The marks are competing and are identical and used in the promotion, sale and advertisement of identical and related apparel, are targeted at the same or related audiences, and FASHION NOVA's adoption and ongoing use of the

1 SWEAT IT OUT Mark for its apparel was willful and with reckless disregard as to  
2 the likelihood of confusion.

3 40. FASHION NOVA directed the use of the SWEAT IT OUT Mark  
4 despite knowing that SWEAT IT OUT owns the rights to the SWEAT IT OUT  
5 Mark, and on information and belief, at least in part *because* of that prior use and  
6 success by SWEAT IT OUT. There is no other explanation for FASHION  
7 NOVA's ongoing three rounds of infringement despite specially making Plaintiff  
8 believe that a prohibition internally had been put in place not to use SWEAT IT  
9 OUT in any manner going forward.

10 41. FASHION NOVA's use of the SWEAT IT OUT Mark has caused  
11 confusion in the marketplace, is likely to cause both confusion and mistake, and is  
12 likely to deceive consumers or result in the belief that FASHION NOVA is  
13 legitimately connected with, sponsored by, affiliated with, or licensed or approved  
14 by, SWEAT IT OUT. The mark used by FASHION NOVA is identical in sound,  
15 appearance, and meaning to SWEAT IT OUT's trademark, is used for identical and  
16 related goods and services, and is targeted to the same customers via the same or  
17 similar promotional channels.

18 42. Such use was done willfully and with knowledge that such use would  
19 and was likely to cause confusion and deceive the relevant audience, including by  
20 virtue of actual notice of SWEAT IT OUT's registered SWEAT IT OUT Marks for  
21 competing goods observed by FASHION NOVA from the marketplace and the  
22 USPTO registry. The infringement was done for the deliberate purpose of trading  
23 off of what FASHION NOVA knew to be SWEAT IT OUT'S valuable brand and  
24 goodwill.

25 43. As a direct and proximate result of FASHION NOVA's trademark  
26 infringement, SWEAT IT OUT has been damaged within the meaning of 15 U.S.C.  
27 § 1114 *et seq.* SWEAT IT OUT has been damaged by both forward and reverse  
28 confusion.



1           44. SWEAT IT OUT has suffered damages in an amount to be established  
2 after proof at trial or in the statutory amount. Statutory damages up to the  
3 maximum for willful infringement are warranted, and the statutory damages are  
4 distinct for each registered item of apparel that Fashion Nova sold infringing  
5 product for, including at least sweatpants, sweat shirts, jackets, sports bras, jogging  
6 suits, gym suits, track suits, sweaters, and wind resistant jackets, all or some of  
7 which accurately describe the infringing products.

8           45. SWEAT IT OUT is further entitled to disgorge FASHION NOVA's  
9 profits for its willful and reckless sales and unjust enrichment, including ongoing  
10 infringement after notice, and because of the breadth of usage on a wide variety of  
11 registered products with the failure to so much as run a trademark search or the  
12 disregard of the results of any such search that was run. Such disgorgement is  
13 necessary due to the mental state of the infringement, unjust enrichment and/or to  
14 deter future infringement by FASHION NOVA and similarly-situated junior users  
15 including under the guidance of the recent Supreme Court explication of profit  
16 disgorgement in *Romag Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. \_\_\_\_ (2020).

17           46. This case qualifies as an "exceptional case" within the meaning of 15  
18 U.S.C. § 1117(a) in that FASHION NOVA's acts were willful, in willful blindness  
19 and reckless disregard, and in bad faith, entitling SWEAT IT OUT to its attorney's  
20 fees and an enhancement of damages, including a trebling of its damages and/or  
21 disgorged profits. Despite actual notice of SWEAT IT OUT's prior and extensive  
22 use and federal application in the SWEAT IT OUT Mark, FASHION NOVA  
23 continued use of the infringing mark for identical products.

24           47. As a direct result of FASHION NOVA's willful and unlawful actions,  
25 SWEAT IT OUT has suffered and continues to suffer irreparable harm and  
26 damages, including damage to and diminution in value of the SWEAT IT OUT  
27 Mark, necessary corrective advertising, lost sales, tarnishment, and loss of brand  
28 control. SWEAT IT OUT's remedy at law is not adequate to compensate for

1 injuries inflicted by FASHION NOVA. Thus, SWEAT IT OUT is entitled to  
2 injunctive relief.

3 **SECOND COUNT**  
4 **FEDERAL AND STATE UNFAIR COMPETITION AND FALSE**  
5 **DESIGNATION OF ORIGIN (*INTER ALIA* 15 U.S.C. § 1125)**

6 48. SWEAT IT OUT repeats and re-alleges all allegations in this  
7 Complaint as if fully set forth herein.

8 49. SWEAT IT OUT is the owner of the SWEAT IT OUT Mark.

9 50. FASHION NOVA's use of the SWEAT IT OUT Mark has caused  
10 confusion in the marketplace, is likely to cause both confusion and mistake, and is  
11 likely to deceive consumers or result in the belief that FASHION NOVA is  
12 legitimately connected with, sponsored by, or licensed or approved by, SWEAT IT  
13 OUT; the mark used by FASHION NOVA is virtually identical in sound,  
14 appearance and meaning to SWEAT IT OUT's trademark, is used for identical and  
15 related goods, and is targeted to the same customers via the same promotional  
16 channels.

17 51. Such use was done willfully and with knowledge (including at least  
18 post-notice) that such use would and was likely to cause confusion and deceive the  
19 relevant audience.

20 52. As a direct and proximate result of FASHION NOVA's trademark  
21 infringement, false designation of origin, and unfair competition, SWEAT IT OUT  
22 has been damaged within the meaning of 15 U.S.C. § 1125(a) and state law.

23 53. SWEAT IT OUT has suffered damages in an amount to be established  
24 after proof at trial.

25 54. SWEAT IT OUT is further entitled to disgorge FASHION NOVA's  
26 profits for its willful sales and unjust enrichment. In addition, disgorgement is  
27 warranted to deter further infringement by FASHION NOVA and others similarly  
28 situated.

55. This case qualifies as an “exceptional case” within the meaning of 15 U.S.C. § 1117(a) in that FASHION NOVA’s acts were willful, in willful blindness and reckless disregard, and taken in bad faith, entitling SWEAT IT OUT to its attorney’s fees and an enhancement of damages, including a trebling of its damages and/or disgorged profits. SWEAT IT OUT is also entitled to reasonable royalties as damages.

56. The conduct in FASHION NOVA'S infringement via its First, Second and Third Round Infringement constitutes willful disregard and malicious conduct, which given notice to FASHION NOVA and retention of IP counsel, was a decision made and condoned by the highest levels of executive management for FASHION NOVA, so as to be acts taken or approved by an officer, director, or managing agent, thus entitling SWEAT IT OUT upon proof to punitive damages, to the extent such remedy is provided by applicable state law.

57. As a direct result of FASHION NOVA's willful and unlawful actions, SWEAT IT OUT has suffered and continues to suffer irreparable harm, including damage to and diminution in value of the SWEAT IT OUT Mark. SWEAT IT OUT's remedy at law is not adequate to compensate for injuries inflicted by FASHION NOVA. Thus, SWEAT IT OUT is entitled to injunctive relief.

## PRAYER FOR RELIEF

WHEREFORE, SWEAT IT OUT demands the following relief for each cause of action unless otherwise noted:

1. A judgment in favor of SWEAT IT OUT and against FASHION NOVA on all counts;

2. A preliminary and permanent injunction from trademark infringement and unfair business practices by FASHION NOVA;

3. Damages in an amount to be determined at trial, including without limit Plaintiff's right to elect statutory damages and/or reasonable royalties;

1 4. FASHION NOVA's unjust enrichment and/or disgorgement of  
2 FASHION NOVA's profits, all enhanced including trebling;

3 5. Trebling of damages for willful or otherwise culpable infringement,  
4 unfair competition, and dilution;

5 6. Punitive or exemplary damages as provided by state law;

6 7. Pre-judgment interest at the legally allowable rate on all amounts  
7 owed;

8 8. Costs and expenses;

9 9. Attorney's fees and other fees under, among others, 15 U.S.C. §  
10 1117(a) and (b) *et seq.* as an exceptional case;

11 10. Such other and further relief as this Court may deem just and proper.

12 **DEMAND FOR JURY TRIAL**

13 SWEAT IT OUT hereby demands a trial by jury on all issues triable pursuant  
14 to Rule 38(b) of the Federal Rules of Civil Procedure.

15  
16 Dated: November 7, 2023

TROUTMAN PEPPER HAMILTON  
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17  
18  
19 By: s/Ben L. Wagner

Ben Lewis Wagner  
Attorneys for Plaintiff  
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